

# SENATE BILL No. 24

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-24-1; IC 35-33-5-5.

**Synopsis:** Forfeiture. Establishes a new procedure for civil forfeiture, and treats seized property in which a person asserts an ownership interest differently from seized property that is abandoned or unclaimed. Permits seized property that is not abandoned or unclaimed to be forfeited to the state only if the person who owned or used the property has been convicted of a criminal offense. Establishes procedures by which a property owner may regain custody of seized property pending a final determination of the forfeiture action. Specifies which law enforcement costs are recoverable in a forfeiture action. Repeals a provision permitting the state to turn over seized property to the federal government. Makes conforming amendments and repeals an obsolete section.

**Effective:** July 1, 2021.

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## Boots

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January 4, 2021, read first time and referred to Committee on Judiciary.

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First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

# SENATE BILL No. 24



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1           SECTION 1. IC 34-24-1-0.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2021]: **Sec. 0.5. The following definitions apply throughout this**  
4 **chapter:**  
5           (1) "Abandoned or unclaimed property" means property with  
6 respect to which no person claims a primary ownership  
7 interest, subject to section 2.1 of this chapter.  
8           (2) "Contested forfeiture" means a forfeiture proceeding  
9 involving property that is not abandoned or unclaimed.  
10          (3) "Owner" means a person having an ownership interest in  
11 property. The term does not include a person with a third  
12 party interest unless otherwise expressly indicated.  
13          (4) "Ownership interest" means the right to exercise control  
14 over the property, including the right to exclude other persons  
15 from exercising control over the property. The term does not  
16 include a person whose only interest is that of a lienholder. An  
17 ownership interest exists even if the person having the interest



1           **may not alienate or otherwise dispose of the property until a**  
 2           **lien is satisfied. More than one (1) person may have an**  
 3           **ownership interest.**

4           **(5) "Reasonable attempts to notify the owner" includes:**

5               **(A) if there is an owner of record, at least three (3)**  
 6               **attempts to contact the owner of record at the owner's**  
 7               **address of record; and**

8               **(B) notice by publication in a manner that complies with**  
 9               **Indiana Trial Rule 4.13.**

10           **(6) "Third party interest" means an interest in property that**  
 11           **is not an ownership interest. The term includes the interest of**  
 12           **a lienholder or a secured creditor.**

13           **(7) "Uncontested forfeiture" means a forfeiture proceeding**  
 14           **involving property that is abandoned or unclaimed.**

15           SECTION 2. IC 34-24-1-2 IS REPEALED [EFFECTIVE JULY 1,  
 16           2021]. Sec. 2: (a) Property may be seized under this chapter by a law  
 17           enforcement officer only if:

18               (1) the seizure is incident to a lawful:

19                   (A) arrest;

20                   (B) search; or

21                   (C) administrative inspection;

22               (2) the property has been the subject of a prior judgment in favor  
 23               of the state or unit in a proceeding under this chapter (or  
 24               ~~IC 34-4-30.1~~ before its repeal); or

25               (3) a court, after making an ex parte determination that there is  
 26               probable cause to believe the property is subject to seizure under  
 27               this chapter, issues an order for seizure:

28               (b) If property is seized under subsection (a)(1), the prosecuting  
 29               attorney shall file an affidavit of probable cause with a circuit or  
 30               superior court in the county in which the seizure occurred not later than  
 31               seven (7) days after the date of the seizure. If the court does not find  
 32               probable cause to believe the property is subject to seizure under this  
 33               chapter, it shall order the property returned to the owner of record:

34               (c) When property is seized under subsection (a), the law  
 35               enforcement agency making the seizure may, pending final disposition:

36                   (1) place the property under seal;

37                   (2) remove the property to a place designated by the court; or

38                   (3) require another agency authorized by law to take custody of  
 39                   the property and remove it to an appropriate location:

40               (d) If property seized under subsection (a)(1) or (a)(3) is real  
 41               property or a vehicle operated or possessed at the time of its seizure by  
 42               a person who is not an owner of the real property or vehicle, the owner



1 of the real property or vehicle may file a verified petition for  
2 provisional release pending final forfeiture determination; requesting  
3 the court to grant the owner possession of the real property or vehicle  
4 while the forfeiture action is pending:

5 (e) A petition for provisional release under this section must:

6 (1) be in writing;

7 (2) be verified by the petitioner;

8 (3) state the grounds for relief;

9 (4) be filed in a circuit or superior court in the county in which the  
10 seizure occurred; and

11 (5) be served on the prosecuting attorney.

12 (f) At the hearing on the petition for provisional release under this  
13 section, the petitioner must establish that the:

14 (1) petitioner is an owner of record;

15 (2) petitioner or the petitioner's family benefits from the use of the  
16 vehicle or the real property;

17 (3) petitioner has insured the property against loss from accident  
18 and casualty; and

19 (4) petitioner had no reason to believe that the vehicle or real  
20 property would be used for illegal activity.

21 (g) At the hearing on the petition for provisional release under this  
22 section, the prosecuting attorney may present evidence that returning  
23 the property to the owner would likely result in:

24 (1) damage to the property or diminution of the value of the  
25 property beyond ordinary wear and tear; or

26 (2) continued use of the property in connection with illegal  
27 activity.

28 (h) If the court grants the petition for provisional release under this  
29 section, the court shall require the owner to:

30 (1) maintain the property; and

31 (2) refrain from selling or otherwise conveying the property  
32 without the permission of the prosecuting attorney.

33 (i) If the court grants the petition for provisional release under this  
34 section, it may place reasonable restrictions on the use of the property;  
35 including one (1) or more of the following:

36 (1) Requiring the owner to post a cash bond.

37 (2) Placing mileage limitations on the use of a vehicle.

38 (3) Imposing reasonable limits on the use of the property.

39 (4) Prohibiting certain persons from the possession, occupation,  
40 or use of the property.

41 (5) Requiring payment of all taxes, registration, and other fees, if  
42 applicable.



(6) Maintaining property, casualty, and accident insurance.

(j) A court may not grant a petition for provisional release under this section if the prosecuting attorney has filed a motion under section 9 of this chapter or IC 35-33-5-5(j).

(k) The prosecuting attorney shall notify the owner of record of a vehicle or real property of the right to file a petition for provisional release under this section not later than seven (7) days after probable cause has been determined under subsection (b).

(l) Property that is seized under subsection (a) (or IC 34-4-30.1-2(a) before its repeal) is not subject to replevin but is considered to be in the custody of the law enforcement agency making the seizure.

SECTION 3. IC 34-24-1-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 2.1. (a) This section applies only to an uncontested forfeiture.**

**(b) Property is considered abandoned or unclaimed property if:**

**(1) at least sixty (60) days have elapsed since the property was seized; and**

**(2) the state, or the state and a unit (if applicable), has made reasonable attempts to notify the owner and no person has claimed an ownership interest in the property.**

**(c) Abandoned or unclaimed property may be forfeited under this chapter if the state, or the state and the unit (if applicable), proves by a preponderance of the evidence that the property is subject to seizure under section 1 of this chapter.**

SECTION 4. IC 34-24-1-2.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 2.2. (a) This section applies only to a contested forfeiture.**

**(b) A person's property may be forfeited under this chapter only if the state, or the state and a unit (if applicable), proves by clear and convincing evidence that:**

**(1) the property is subject to seizure under section 1 of this chapter;**

**(2) the related criminal prosecution of the person who possessed or used the seized property resulted in a conviction;**

**(3) if the owner of the property is not the person described in subdivision (2), the owner knew or reasonably should have known that the person described in subdivision (2) intended to use the property to commit the related criminal offense;**

**(4) the value of the property to be forfeited does not unreasonably exceed the:**



- 1                   (A) pecuniary:  
 2                   (i) gain derived or sought to be derived by the crime; or  
 3                   (ii) loss caused or sought to be caused by the crime; and  
 4                   (B) value of the owner's interest in the property; and  
 5                   (5) forfeiture of the property is not disproportionate when  
 6                   compared to the related criminal act.  
 7                   (c) Following a person's conviction for an offense permitting  
 8                   seizure of the property under section 1 of this chapter, and proof  
 9                   by clear and convincing evidence of the matters described in  
 10                   subsection (b), a court may order the forfeiture of property  
 11                   described in section 1 of this chapter that:  
 12                   (1) the person acquired through commission of the offense;  
 13                   (2) is directly traceable to property acquired through  
 14                   commission of the offense; or  
 15                   (3) is an instrumentality used to commit the offense.  
 16                   SECTION 5. IC 34-24-1-2.3 IS ADDED TO THE INDIANA CODE  
 17                   AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 18                   1, 2021]: Sec. 2.3. (a) At the request of the state, or the state and a  
 19                   unit (if applicable), a court may issue an ex parte preliminary  
 20                   order to seize property described in section 1 of this chapter.  
 21                   Before issuing an order under this subsection, the court must find  
 22                   that:  
 23                   (1) there is a reasonable likelihood that:  
 24                   (A) the property is subject to seizure;  
 25                   (B) the state, or the state and the unit (if applicable), will  
 26                   prevail on the issue of forfeiture; and  
 27                   (C) failure to enter the order will result in the property  
 28                   being destroyed, removed from Indiana, or otherwise  
 29                   made unavailable for forfeiture; and  
 30                   (2) the need to preserve the availability of the property  
 31                   through the entry of the requested order outweighs the  
 32                   hardship to the owner and other parties known to be claiming  
 33                   an interest in the property.  
 34                   (b) Property may be seized under this chapter by a law  
 35                   enforcement officer only if:  
 36                   (1) the seizure is incident to a lawful:  
 37                   (A) arrest; or  
 38                   (B) search;  
 39                   and the law enforcement officer conducting the arrest or  
 40                   search has probable cause to believe that the property is  
 41                   subject to seizure;  
 42                   (2) the property has been the subject of a prior judgment in



1 favor of the state or unit in a proceeding under this chapter;  
2 or

3 (3) a court issues an order to seize the property after making  
4 an ex parte determination that:

5 (A) there is a reasonable likelihood that:

6 (i) the property is subject to seizure;

7 (ii) the state, or the state and the unit (if applicable), will  
8 prevail on the issue of forfeiture; and

9 (iii) failure to enter the order will result in the property  
10 being destroyed, removed from Indiana, or otherwise  
11 made unavailable for forfeiture; and

12 (B) the need to preserve the availability of the property  
13 through the entry of the requested order outweighs the  
14 hardship to the owner and other parties known to be  
15 claiming an ownership interest or a third party interest in  
16 the property.

17 (c) When property is seized under this section, the law  
18 enforcement agency making the seizure may, pending final  
19 disposition:

20 (1) place the property under seal;

21 (2) remove the property to a place designated by the court; or

22 (3) require another agency authorized by law to take custody  
23 of the property and remove it to an appropriate location.

24 (d) Property that is seized under this section is considered to be  
25 in the custody of the law enforcement agency making the seizure.

26 SECTION 6. IC 34-24-1-2.4 IS ADDED TO THE INDIANA CODE  
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
28 1, 2021]: Sec. 2.4. (a) The owner of seized property may regain  
29 custody of the property, pending a final forfeiture determination,  
30 under this section or section 2.5 of this chapter.

31 (b) The owner of seized property may bring an action for the  
32 release of seized property that has not been forfeited by filing a  
33 petition for release in the court in which the related criminal  
34 matter is pending. The petition for release and any related  
35 proceedings are a civil matter. If the owner prevails in an action  
36 for release, the court shall issue a preliminary order of possession  
37 and the property shall be returned to the owner pending final  
38 resolution of the forfeiture action described in section 4.1 of this  
39 chapter. If the property is ordered forfeited under section 4.1 of  
40 this chapter, the court shall dissolve the preliminary order of  
41 possession and the appropriate law enforcement agency, or  
42 another person as ordered by the court, may take possession of the



1 **property. If the property is not ordered forfeited, the court shall**  
 2 **issue a final order of possession in favor of the owner.**

3 **(c) In a civil proceeding under this section, the state bears the**  
 4 **burden of proving by a preponderance of the evidence that:**

5 **(1) there is a reasonable likelihood that:**

6 **(A) the property is subject to seizure;**

7 **(B) the state, or the state and the unit (if applicable), will**  
 8 **prevail on the issue of forfeiture; and**

9 **(C) failure to enter the order will result in the property**  
 10 **being destroyed, removed from Indiana, or otherwise**  
 11 **made unavailable for forfeiture; and**

12 **(2) the need to preserve the availability of the property**  
 13 **through the entry of the requested order outweighs the**  
 14 **hardship to the owner and other parties known to be claiming**  
 15 **an ownership interest or third party interest in the property.**

16 **(d) If the court orders property returned to the owner under**  
 17 **this section, the court may place reasonable restrictions on the**  
 18 **owner's possession, use, and disposal of the property, including**  
 19 **authorization for the state to place a lien on the property.**

20 **SECTION 7. IC 34-24-1-2.5 IS ADDED TO THE INDIANA CODE**  
 21 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**  
 22 **1, 2021]: Sec. 2.5. (a) As used in this section, "owner" includes a**  
 23 **person with a third party interest in the property.**

24 **(b) The owner of property seized under this chapter may file a**  
 25 **motion for hardship release of the property at any time after the**  
 26 **property is seized. The owner shall file the motion in:**

27 **(1) the court having jurisdiction over the related criminal**  
 28 **action, if a related criminal action has been filed; or**

29 **(2) any court having jurisdiction.**

30 **The motion for hardship release and any related proceedings are**  
 31 **a civil matter, even if filed in the court having jurisdiction over the**  
 32 **related criminal action.**

33 **(c) If a motion for hardship release of the property is filed, the**  
 34 **court shall conduct a hearing not more than ten (10) days after the**  
 35 **date the court receives the motion.**

36 **(d) After the hearing, the court shall order the property released**  
 37 **to the owner pending final disposition of the property, if the owner**  
 38 **establishes the following by a preponderance of the evidence:**

39 **(1) The owner has an interest in the property.**

40 **(2) Continued possession by the law enforcement agency**  
 41 **pending the final disposition of the forfeiture proceedings will**  
 42 **cause a substantial hardship to the owner, including the**



1 following:

- 2 (A) Preventing the functioning of a legitimate business.  
 3 (B) Preventing an individual from working.  
 4 (C) Preventing a child from attending school.  
 5 (D) Preventing or hindering an individual from receiving  
 6 necessary medical care.  
 7 (E) Hindering the care of an elderly individual or a  
 8 disabled dependent child or adult.  
 9 (F) Leaving an individual homeless.  
 10 (G) Any other condition presented to the court by the  
 11 owner or putative interest holder that the court determines  
 12 causes a substantial hardship.

13 (3) The hardship from the continued possession of the  
 14 property by the law enforcement agency that seized the  
 15 property outweighs the risk that the property will be:

- 16 (A) unlawfully used;  
 17 (B) destroyed;  
 18 (C) removed from the jurisdiction of the court; or  
 19 (D) otherwise made unavailable for forfeiture;

20 if the property is returned to the owner during the pendency  
 21 of the forfeiture determination.

22 (e) A person may seek both release under section 2.4 of this  
 23 chapter and hardship release under this section, if applicable.

24 (f) If the court orders property returned to the owner under this  
 25 section, the court may place reasonable restrictions on the owner's  
 26 possession, use, and disposal of the property, including  
 27 authorization for the state to place a lien on the property.

28 SECTION 8. IC 34-24-1-3, AS AMENDED BY P.L.47-2018,  
 29 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2021]: Sec. 3. (a) **This subsection applies only to a  
 31 contested forfeiture.** The prosecuting attorney for the county in which  
 32 the seizure occurs may, within twenty-one (21) days after receiving  
 33 written notice from the owner demanding return of the seized property  
 34 or within ninety (90) days after the property is seized, whichever occurs  
 35 first, cause an action for forfeiture to be brought by filing a complaint  
 36 in the circuit or superior court in the jurisdiction where the seizure  
 37 occurred. The action must be brought:

- 38 (1) in the name of the state; and  
 39 (2) within the period that a prosecution may be commenced under  
 40 IC 35-41-4-2 for the offense that is the basis for the seizure.

41 **Not later than twenty-one (21) days after property is seized under**  
 42 **this chapter, or at the time the information is filed against the**



1 person who owned or used the property, whichever occurs earlier,  
 2 the prosecuting attorney shall file a civil action for forfeiture and  
 3 reimbursement of law enforcement costs in the court having  
 4 jurisdiction over the related criminal case or return the property  
 5 to the owner. The defendant in the related criminal case and the  
 6 person who owns the property (if the owner is not the defendant in  
 7 the related criminal case) shall be named as defendants in the  
 8 forfeiture action. A civil action for forfeiture filed in a court having  
 9 criminal jurisdiction remains a civil action for all purposes, but  
 10 shall be adjudicated by the court having jurisdiction over the  
 11 related criminal case to promote judicial economy.

12 (b) This subsection applies only to an uncontested forfeiture. At  
 13 any time:

- 14 (1) after property is determined to be abandoned or  
 15 unclaimed property under section 2.1 of this chapter; and  
 16 (2) before the expiration of the period that a prosecution may  
 17 be commenced under IC 35-41-4-2 for the offense that is the  
 18 basis for the seizure;

19 the prosecuting attorney may file a civil action for forfeiture and  
 20 reimbursement of law enforcement costs in any court of competent  
 21 jurisdiction in the county in which the seizure occurred.

22 (c) A civil action for forfeiture shall be brought in the name of  
 23 the state, or in the name of the state and the unit that employed the  
 24 law enforcement officer who made the seizure, if the state was not  
 25 the employer. If the prosecuting attorney returns the property to  
 26 the owner, the owner is not liable for any costs or fees incurred in  
 27 storing, transporting, or maintaining the property.

28 ~~(b)~~ (d) If the property seized was a vehicle or real property, the  
 29 prosecuting attorney shall serve, under the Indiana Rules of Trial  
 30 Procedure, a copy of the **civil** complaint **for forfeiture** upon each  
 31 person whose right, title, or interest is of record in the bureau of motor  
 32 vehicles, in the county recorder's office, or other office authorized to  
 33 receive or record vehicle or real property ownership interests.

34 ~~(c)~~ (e) If, after the expiration of the ~~twenty-one (21) or ninety (90)~~  
 35 ~~day~~ period described in subsection (a), the prosecuting attorney has not  
 36 filed a **civil** complaint initiating an action for forfeiture, the property  
 37 shall be returned immediately to the owner, or to a lienholder or bona  
 38 fide purchaser for value. If the property is returned without a complaint  
 39 for forfeiture having been filed, the owner, lienholder, or bona fide  
 40 purchaser for value is not liable for any costs or fees incurred in  
 41 storing, transporting, or maintaining the property.

42 ~~(d)~~ (f) The owner of the seized property, or any person whose right,



1 title, or interest is of record may, ~~within~~ **not later than** twenty (20)  
 2 days after service of the **civil** complaint **for forfeiture** under the  
 3 Indiana Rules of Trial Procedure, file an answer to the complaint and  
 4 may appear at the hearing on the action.

5 ~~(e)~~ **(g)** If, at the end of the time allotted for an answer, there is no  
 6 answer on file, the court, upon motion, shall enter **a default** judgment  
 7 in favor of the state, **or the state and the unit (if appropriate), on the**  
 8 **issue of forfeiture. Upon conviction of the person who used or**  
 9 **possessed the property, the court shall issue an order for**  
 10 **reimbursement of law enforcement costs** and shall order the property  
 11 disposed of in accordance with ~~section 4~~ of this chapter, **with no**  
 12 **further process.**

13 **(h) Law enforcement costs recoverable under this section**  
 14 **include only those expenses directly incurred in:**

- 15 **(1) arresting the person who possessed or used the property;**
- 16 **(2) investigating the person who possessed or used the**  
 17 **property;**
- 18 **(3) investigating the offense with respect to which the**  
 19 **property was used or possessed, and investigating any other**  
 20 **offense related to the commission of that offense; and**
- 21 **(4) prosecuting the civil forfeiture action.**

22 **However, law enforcement costs incurred in the arrest of a person**  
 23 **other than the person who possessed or used the property, in the**  
 24 **investigation of a person other than the person who possessed or**  
 25 **used the property, or in the prosecution of a civil forfeiture action**  
 26 **against a person other than the person who possessed or used the**  
 27 **property are recoverable if the arrest, investigation, or forfeiture**  
 28 **action is related to the offense committed by the person who**  
 29 **possessed or used the property that is the subject of the civil**  
 30 **forfeiture action.**

31 **SECTION 9. IC 34-24-1-4 IS REPEALED [EFFECTIVE JULY 1,**  
 32 **2021]. Sec. 4: (a) At the hearing, the prosecuting attorney must show**  
 33 **by a preponderance of the evidence that the property was within the**  
 34 **definition of property subject to seizure under section 1 of this chapter.**  
 35 **If the property seized was a vehicle, the prosecuting attorney must also**  
 36 **show by a preponderance of the evidence that a person who has an**  
 37 **ownership interest of record in the bureau of motor vehicles knew or**  
 38 **had reason to know that the vehicle was being used in the commission**  
 39 **of the offense.**

40 **(b) If the prosecuting attorney fails to meet the burden of proof, the**  
 41 **court shall order the property released to the owner, unless the owner's**  
 42 **possession of the property is illegal. If property is released to the owner**



1 under this subsection; the owner is not subject to or responsible for any  
 2 charges for storage of the property or other expenses incurred in the  
 3 preservation of the property.

4 (c) If the court enters judgment in favor of the state, the court,  
 5 subject to section 5 of this chapter, shall order distribution of the  
 6 property in accordance with subsection (d). The court's order may  
 7 permit the law enforcement agency to use the property for a period not  
 8 to exceed three (3) years. However, the order must require that, after  
 9 the period specified by the court, the law enforcement agency shall  
 10 deliver the property to the county sheriff for public sale.

11 (d) If the court enters judgment in favor of the state, the court shall;  
 12 subject to section 5 of this chapter order that:

13 (1) the property, if it is not money or real property, be sold under  
 14 section 6 of this chapter, by the sheriff of the county in which the  
 15 property was seized, and if the property is a vehicle, this sale must  
 16 occur after any period of use specified in subsection (c);

17 (2) the property, if it is real property, be sold in the same manner  
 18 as real property is sold on execution under IC 34-55-6; and

19 (3) the proceeds of the sale or the money be distributed as  
 20 follows:

21 (A) To pay attorney's fees, if outside counsel is employed  
 22 under section 8 of this chapter.

23 (B) After payment of attorney's fees under clause (A), one  
 24 third (1/3) of the remaining amount shall be deposited into the  
 25 forfeiture fund established by the prosecuting attorney to offset  
 26 expenses incurred in connection with the investigation and  
 27 prosecution of the action.

28 (C) Except as provided in clause (D), after distribution of the  
 29 proceeds described in clauses (A) and (B), if applicable,  
 30 eighty-five percent (85%) of the remaining proceeds shall be  
 31 deposited in the:

32 (i) general fund of the state;

33 (ii) general fund of the unit that employed the law  
 34 enforcement officers that seized the property; or

35 (iii) county law enforcement fund established for the support  
 36 of the drug task force;

37 as determined by the court, to offset expenses incurred in the  
 38 investigation of the acts giving rise to the action.

39 (D) After distribution of the proceeds described in clauses (A)  
 40 and (B), if applicable, eighty-five percent (85%) of the  
 41 remaining proceeds shall be deposited in the general fund of  
 42 a unit if the property was seized by a local law enforcement



1 agency of the unit for an offense, an attempted offense, or a  
 2 conspiracy to commit a felony terrorist offense (as defined in  
 3 IC 35-50-2-18) or an offense under IC 35-47 as part of or in  
 4 furtherance of an act of terrorism.

5 The court shall order that the proceeds remaining after the distribution  
 6 of funds to offset expenses described in subdivision (3) be forfeited and  
 7 transferred to the treasurer of state for deposit in the common school  
 8 fund.

9 (e) If property that is seized under this chapter (or IC 34-4-30.1-4  
 10 before its repeal) is transferred:

11 (1) after its seizure, but before an action is filed under section 3  
 12 of this chapter (or IC 34-4-30.1-3 before its repeal); or

13 (2) when an action filed under section 3 of this chapter (or  
 14 IC 34-4-30.1-3 before its repeal) is pending;

15 the person to whom the property is transferred must establish an  
 16 ownership interest of record as a bona fide purchaser for value. A  
 17 person is a bona fide purchaser for value under this section if the  
 18 person, at the time of the transfer, did not have reasonable cause to  
 19 believe that the property was subject to forfeiture under this chapter.

20 (f) If the property seized was an unlawful telecommunications  
 21 device (as defined in IC 35-45-13-6) or plans, instructions, or  
 22 publications used to commit an offense under IC 35-45-13, the court  
 23 may order the sheriff of the county in which the person was convicted  
 24 of an offense under IC 35-45-13 to destroy as contraband or to  
 25 otherwise lawfully dispose of the property.

26 SECTION 10. IC 34-24-1-4.1 IS ADDED TO THE INDIANA  
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 2021]: **Sec. 4.1. (a) This section does not**  
 29 **apply:**

30 (1) if the court has entered a default judgment under section  
 31 3(g) of this chapter; or

32 (2) to an uncontested forfeiture.

33 (b) The civil forfeiture proceeding shall be held immediately  
 34 after the trier of fact returns its verdict in the related criminal  
 35 matter.

36 (c) If the person was convicted of the offense in a jury trial, the  
 37 jury shall reconvene to hear evidence in the civil forfeiture  
 38 proceeding. If the trial was to the court, or the judgment was  
 39 entered on a guilty plea, the court alone shall hear evidence in the  
 40 civil forfeiture hearing.

41 (d) If the trier of fact finds that the state, or the state and a unit  
 42 (if applicable), has proved by clear and convincing evidence that:



- 1           **(1) the property is subject to seizure under section 1 of this**  
 2           **chapter;**  
 3           **(2) the related criminal prosecution of the person who**  
 4           **possessed or used the seized property resulted in a conviction;**  
 5           **(3) if the owner of the property is not the person described in**  
 6           **subdivision (2), the owner knew or reasonably should have**  
 7           **known that the person described in subdivision (2) intended**  
 8           **to use the property to commit the related criminal offense;**  
 9           **(4) the value of the property to be forfeited does not**  
 10           **unreasonably exceed the:**  
 11               **(A) pecuniary:**  
 12                   **(i) gain derived or sought to be derived by the crime; or**  
 13                   **(ii) loss caused or sought to be caused by the crime; and**  
 14               **(B) value of the owner's interest in the property; and**  
 15           **(5) forfeiture of the property is not disproportionate when**  
 16           **compared to:**  
 17               **(A) the related criminal act; and**  
 18               **(B) if the owner is not the person who possessed or used the**  
 19               **property, the owner's complicity in the related criminal**  
 20               **act;**  
 21           **the trier of fact shall enter a judgment of forfeiture. The trier of**  
 22           **fact may enter a partial order of forfeiture and order that only**  
 23           **some of the seized property be forfeited.**  
 24           **(e) In determining whether the value of property subject to**  
 25           **forfeiture unreasonably exceeds the amounts described in**  
 26           **subsection (d)(4), the trier of fact shall consider all relevant factors,**  
 27           **including the:**  
 28               **(1) fair market value of the property;**  
 29               **(2) value of the property to the owner, including any hardship**  
 30               **that the owner will suffer if the property is forfeited; and**  
 31               **(3) hardship from the loss of a primary residence, motor**  
 32               **vehicle, or other property to the defendant's family members**  
 33               **or others if the property is forfeited.**  
 34           **In making its determination under this subsection, the trier of fact**  
 35           **may not consider the value of the property to the state, or the state**  
 36           **and the unit (if applicable).**  
 37           **(f) If the owner of the property is a person who was represented**  
 38           **by a public defender in the related criminal case, the public**  
 39           **defender may represent the person in the forfeiture proceeding.**  
 40           **(g) Discovery in a forfeiture proceeding is subject to the Indiana**  
 41           **Rules of Trial Procedure and shall be conducted in the same**  
 42           **manner as in other civil actions.**



1 (h) A person with an ownership interest in the property who is  
 2 not named in the forfeiture action may intervene as in other civil  
 3 cases.

4 (i) A court may not accept a plea agreement in which a  
 5 defendant agrees to donate property otherwise subject to forfeiture  
 6 to a person, charity, or other organization.

7 (j) A person is not jointly and severally liable for an order of  
 8 forfeiture. If property owned by more than one (1) person is  
 9 subject to forfeiture, the trier of fact shall, subject to section 5 of  
 10 this chapter, order each owner to forfeit the person's share of the  
 11 property on a pro rata basis or by another equitable means.

12 SECTION 11. IC 34-24-1-4.2 IS ADDED TO THE INDIANA  
 13 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 14 [EFFECTIVE JULY 1, 2021]: **Sec. 4.2. (a)** If the trier of fact enters  
 15 judgment in favor of the state, or the state and a unit (if  
 16 applicable), the court, subject to section 5 of this chapter, shall  
 17 order delivery of the property to the law enforcement agency that  
 18 seized the property. The court's order may permit the agency to  
 19 use the property for a period not to exceed three (3) years.  
 20 However, the order must require that, after the period specified by  
 21 the court, the law enforcement agency deliver the property to the  
 22 county sheriff for public sale.

23 (b) If the court enters judgment in favor of the state, or the state  
 24 and a unit (if applicable), the court shall, subject to section 5 of this  
 25 chapter:

26 (1) determine the amount of law enforcement costs (as  
 27 described in section 3 of this chapter); and

28 (2) order that:

29 (A) the property, if it is not money or real property, be sold  
 30 under section 6 of this chapter by the sheriff of the county  
 31 in which the property was seized, and if the property is a  
 32 vehicle, this sale must occur after any period of use  
 33 specified in subsection (a);

34 (B) the property, if it is real property, be sold in the same  
 35 manner as real property is sold on execution under  
 36 IC 34-55-6;

37 (C) the proceeds of the sale or the money must be:

38 (i) deposited in the state general fund, or the general  
 39 fund of the unit that employed the law enforcement  
 40 officers who seized the property; or

41 (ii) deposited in the general fund of the unit if the  
 42 property was seized by a local law enforcement agency



1                   of the unit for an offense, an attempted offense, or a  
 2                   conspiracy to commit an offense under IC 35-47 as part  
 3                   of or in furtherance of an act of terrorism; and  
 4                   **(D) any excess in value of the proceeds or the money over**  
 5                   **the law enforcement costs be forfeited and transferred to**  
 6                   **the treasurer of state for deposit in the common school**  
 7                   **fund.**  
 8                   **Property transferred to the state general fund or the general**  
 9                   **fund of the unit may be disbursed only pursuant to an**  
 10                   **appropriation, and may only be used for law enforcement**  
 11                   **expenses.**  
 12                   **(c) If property that is seized under this chapter is transferred:**  
 13                   **(1) after its seizure, but before an action for forfeiture is filed**  
 14                   **under section 3 of this chapter; or**  
 15                   **(2) while an action for forfeiture filed under section 3 of this**  
 16                   **chapter is pending;**  
 17                   **the person to whom the property is transferred must establish an**  
 18                   **ownership interest of record as a bona fide purchaser for value. A**  
 19                   **person is a bona fide purchaser for value under this section if the**  
 20                   **person, at the time of the transfer, did not have reasonable cause**  
 21                   **to believe that the property was subject to forfeiture under this**  
 22                   **chapter.**  
 23                   **(d) If the property seized was an unlawful telecommunications**  
 24                   **device (as defined in IC 35-45-13-6) or plans, instructions, or**  
 25                   **publications used to commit an offense under IC 35-45-13, the**  
 26                   **court may order the sheriff of the county in which the person was**  
 27                   **convicted of an offense under IC 35-45-13 to destroy as contraband**  
 28                   **or to otherwise lawfully dispose of the property.**  
 29                   SECTION 12. IC 34-24-1-4.5, AS AMENDED BY P.L.47-2018,  
 30                   SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31                   JULY 1, 2021]: Sec. 4.5. (a) After a prosecuting attorney files a  
 32                   forfeiture action, the prosecuting attorney shall report the following to  
 33                   the Indiana prosecuting attorneys council:  
 34                   (1) The date the property was seized.  
 35                   (2) Whether the property seized was cash, a vehicle, real property,  
 36                   or other personal property.  
 37                   (3) Whether the forfeiture was filed in state court or through  
 38                   federal adoptive seizure.  
 39                   This subsection applies even if the prosecuting attorney has retained an  
 40                   attorney to bring the forfeiture action.  
 41                   (b) After a court enters a judgment in favor of the state or **the state**  
 42                   **and** a unit under ~~section 4~~ **section 4.1** of this chapter, the prosecuting



1 attorney shall report the following to the Indiana prosecuting attorneys  
2 council:

3 (1) The amount of money or property that is the subject of the  
4 judgment.

5 (2) The law enforcement agency to which the money or property  
6 is ordered to be transferred.

7 (3) Whether the forfeiture was contested.

8 (4) Whether an innocent owner made a claim to the property.

9 (5) Whether the final disposition of the property resulted in the  
10 property being returned, destroyed, forfeited, retained, or  
11 distributed by settlement.

12 (6) The date of the final disposition.

13 This subsection applies even if the prosecuting attorney has retained an  
14 attorney to bring an action under this chapter.

15 (c) After a court, upon motion of the prosecuting attorney under  
16 IC 35-33-5-5(j) **(as in effect before July 1, 2021, and before the**  
17 **repeal of section 9 of this chapter)**, orders property transferred to a  
18 federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C.  
19 1616a, or 21 U.S.C. 881(e), and any related regulations adopted by the  
20 United States Department of Justice, the prosecuting attorney shall  
21 report to the Indiana prosecuting attorneys council the amount of  
22 money or property transferred. This subsection applies even if the  
23 prosecuting attorney has retained an attorney to bring an action under  
24 this chapter.

25 (d) A report made to the Indiana prosecuting attorneys council under  
26 this section must be in a format approved by the prosecuting attorneys  
27 council. A prosecuting attorney with no forfeitures to report shall file  
28 a report with the Indiana prosecuting attorneys council.

29 SECTION 13. IC 34-24-1-5, AS AMENDED BY P.L.79-2017,  
30 SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
31 JULY 1, 2021]: Sec. 5. (a) If:

32 (1) the court has entered judgment in favor of the state **or the**  
33 **state** and a unit (if appropriate) concerning property that is  
34 subject to seizure under this chapter; and

35 (2) a person:

36 (A) holding a valid lien, mortgage, security interest, or interest  
37 under a conditional sales contract; or

38 (B) who is a co-owner of the property;

39 did not know of the illegal use;

40 the court shall determine whether the secured interest or the co-owner's  
41 interest is equal to or in excess of the appraised value of the property.

42 (b) Appraised value is to be determined as of the date of judgment



1 on a wholesale basis by:  
 2 (1) agreement between the secured party or the co-owner and the  
 3 prosecuting attorney; or  
 4 (2) the county assessor for the county in which the action is  
 5 brought.  
 6 (c) If the amount:  
 7 (1) due to the secured party; or  
 8 (2) of the co-owner's interest;  
 9 is equal to or greater than the appraised value of the property, the court  
 10 shall order the property released to the secured party or the co-owner.  
 11 (d) If the amount:  
 12 (1) due the secured party; or  
 13 (2) of the co-owner's interest;  
 14 is less than the appraised value of the property, the holder of the  
 15 interest or the co-owner may pay into the court an amount equal to the  
 16 owner's equity, which shall be the difference between the appraised  
 17 value and the amount of the lien, mortgage, security interest, interest  
 18 under a conditional sales contract, or co-owner's interest. Upon such  
 19 payment, the state or unit, or both, shall relinquish all claims to the  
 20 property, and the court shall order the payment deposited as provided  
 21 in ~~section 4(d)~~ **section 4.2(b)** of this chapter.  
 22 (e) If the seized property is a vehicle and if the security holder or the  
 23 co-owner elects not to make payment as stated in subsection (d), the  
 24 vehicle shall be disposed of in accordance with ~~section 4(e)~~ **section**  
 25 **4.2(a)** of this chapter.  
 26 SECTION 14. IC 34-24-1-6 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. (a) Where  
 28 disposition of property is to be made at a public sale, notice of sale  
 29 shall be published in accordance with IC 34-55-6.  
 30 (b) When property is sold at a public sale under this chapter, the  
 31 proceeds shall be distributed in the following order:  
 32 (1) First, to the sheriff of the county for all expenditures made or  
 33 incurred in connection with the sale, including storage,  
 34 transportation, and necessary repair.  
 35 (2) Second, to any person:  
 36 (A) holding a valid lien, mortgage, land contract, or interest  
 37 under a conditional sales contract or the holder of other such  
 38 interest; or  
 39 (B) who is a co-owner and has an ownership interest;  
 40 up to the amount of that person's interest as determined by the  
 41 court.  
 42 (3) The remainder, if any, shall be transferred by the sheriff to the



1 appropriate fund as ordered by the court in ~~section 4(d)~~ **section**  
2 **4.2(b)** of this chapter.

3 SECTION 15. IC 34-24-1-9 IS REPEALED [EFFECTIVE JULY 1,  
4 2021]. Sec. 9: (a) Upon motion of a prosecuting attorney under  
5 IC 35-33-5-5(j); property seized under this chapter must be transferred;  
6 subject to the perfected liens or other security interests of any person  
7 in the property; to the appropriate federal authority for disposition  
8 under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any  
9 related regulations adopted by the United States Department of Justice.

10 (b) Money received by a law enforcement agency as a result of a  
11 forfeiture under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.  
12 881(e) and any related regulations adopted by the United States  
13 Department of Justice must be deposited into a nonreverting fund and  
14 may be expended only with the approval of:

15 (1) the executive (as defined in IC 36-1-2-5); if the money is  
16 received by a local law enforcement agency; or

17 (2) the governor; if the money is received by a law enforcement  
18 agency in the executive branch.

19 The money received under this subsection must be used solely for the  
20 benefit of any agency directly participating in the seizure or forfeiture  
21 for purposes consistent with federal laws and regulations.

22 SECTION 16. IC 35-33-5-5, AS AMENDED BY P.L.1-2007,  
23 SECTION 225, IS AMENDED TO READ AS FOLLOWS  
24 [EFFECTIVE JULY 1, 2021]: Sec. 5. (a) All items of property seized  
25 by any law enforcement agency as a result of an arrest, search warrant,  
26 or warrantless search, shall be securely held by the law enforcement  
27 agency under the order of the court trying the cause, except as provided  
28 in this section.

29 (b) Evidence that consists of property obtained unlawfully from its  
30 owner may be returned by the law enforcement agency to the owner  
31 before trial, in accordance with IC 35-43-4-4(h).

32 (c) Following the final disposition of the cause at trial level or any  
33 other final disposition the following shall be done:

34 (1) Property which may be lawfully possessed shall be returned  
35 to its rightful owner, if known. If ownership is unknown, a  
36 reasonable attempt shall be made by the law enforcement agency  
37 holding the property to ascertain ownership of the property. After  
38 ninety (90) days from the time:

39 (A) the rightful owner has been notified to take possession of  
40 the property; or

41 (B) a reasonable effort has been made to ascertain ownership  
42 of the property;



- 1 the law enforcement agency holding the property shall, at a  
2 convenient time, dispose of this property at a public auction. The  
3 proceeds of this property shall be paid into the county general  
4 fund.
- 5 (2) Except as provided in subsection (e), property, the possession  
6 of which is unlawful, shall be destroyed by the law enforcement  
7 agency holding it sixty (60) days after final disposition of the  
8 cause.
- 9 (3) A firearm that has been seized from a person who is  
10 dangerous (as defined in IC 35-47-14-1) shall be retained,  
11 returned, or disposed of in accordance with IC 35-47-14.
- 12 (d) If any property described in subsection (c) was admitted into  
13 evidence in the cause, the property shall be disposed of in accordance  
14 with an order of the court trying the cause.
- 15 (e) A law enforcement agency may destroy or cause to be destroyed  
16 chemicals, controlled substances, or chemically contaminated  
17 equipment (including drug paraphernalia as described in  
18 IC 35-48-4-8.5) associated with the illegal manufacture of drugs or  
19 controlled substances without a court order if all the following  
20 conditions are met:
- 21 (1) The law enforcement agency collects and preserves a  
22 sufficient quantity of the chemicals, controlled substances, or  
23 chemically contaminated equipment to demonstrate that the  
24 chemicals, controlled substances, or chemically contaminated  
25 equipment was associated with the illegal manufacture of drugs  
26 or controlled substances.
- 27 (2) The law enforcement agency takes photographs of the illegal  
28 drug manufacturing site that accurately depict the presence and  
29 quantity of chemicals, controlled substances, and chemically  
30 contaminated equipment.
- 31 (3) The law enforcement agency completes a chemical inventory  
32 report that describes the type and quantities of chemicals,  
33 controlled substances, and chemically contaminated equipment  
34 present at the illegal manufacturing site.
- 35 The photographs and description of the property shall be admissible  
36 into evidence in place of the actual physical evidence.
- 37 (f) For purposes of preserving the record of any conviction on  
38 appeal, a photograph demonstrating the nature of the property, and an  
39 adequate description of the property must be obtained before the  
40 disposition of the property. In the event of a retrial, the photograph and  
41 description of the property shall be admissible into evidence in place  
42 of the actual physical evidence. All other rules of law governing the



1 admissibility of evidence shall apply to the photographs.

2 (g) The law enforcement agency disposing of property in any  
3 manner provided in subsection (b), (c), or (e) shall maintain certified  
4 records of any disposition under subsection (b), (c), or (e). Disposition  
5 by destruction of property shall be witnessed by two (2) persons who  
6 shall also attest to the destruction.

7 (h) This section does not affect the procedure for the disposition of  
8 firearms seized by a law enforcement agency.

9 (i) A law enforcement agency that disposes of property by auction  
10 under this section shall permanently stamp or otherwise permanently  
11 identify the property as property sold by the law enforcement agency.

12 ~~(j) Upon motion of the prosecuting attorney, the court shall order~~  
13 ~~property seized under IC 34-24-1 transferred; subject to the perfected~~  
14 ~~liens or other security interests of any person in the property; to the~~  
15 ~~appropriate federal authority for disposition under 18 U.S.C. 981(e), 19~~  
16 ~~U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted~~  
17 ~~by the United States Department of Justice.~~

